

Before the
Federal Communications Commission
Washington, D.C. 20554

In the Matter of)	
Rules and Regulations Implementing)	
Minimum Customer Account Record)	CG Docket No. 02-386
Exchange Obligations on All Local and)	
Interexchange Carriers)	

REPLY COMMENTS OF AMERICATEL CORPORATION

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Americatel Corporation (“Americatel”),¹ through its attorneys, respectfully files its reply comments in the above-captioned matter with the Federal Communications Commission (“FCC” or “Commission”).²

I. Introduction and Summary

Americatel responds to the arguments of some carriers that there would be excessive industry costs for implementing mandatory minimum Customer Account Record Exchange (“CARE”) standards and a national line-level database for the exchange of customer billing information. Those parties ignore the even higher costs incurred by dial-around carriers

¹ Americatel, a Delaware corporation that is a subsidiary of ENTEL Chile, is a common carrier providing domestic and international telecommunications services. ENTEL Chile is the largest provider of long distance services in Chile. Americatel also operates as an Internet Service Provider (“ISP”). Americatel specializes in serving Hispanic communities throughout the United States, offering presubscribed (1+), dial-around, and prepaid long distance services, as well as private line and other high-speed services to its business customers. The majority of traffic carried by Americatel is dial-around in nature.

² *Rules and Regulations Implementing Minimum Customer Account Record Exchange Obligations on All Local and Interexchange Carriers*, Notice of Proposed Rulemaking, CG Docket No. 02-386, FCC 04-50 (rel. March 25, 2004) (“*NPRM*”).

that cannot bill all of their calls because they cannot obtain the identity of their customers' local exchange carriers ("LECs") and the likely negative impact on consumers should this calling option disappear.

Americatel also explains why existing products that offer dial-around carriers information about serving LECs are inadequate in the absence of mandatory carrier participation in a national line-level database or clearing house. Many of the comments demonstrate a misunderstanding of the dial-around business. Some commenting parties are incorrectly arguing that privacy concerns or even the FCC's Customer Proprietary Network Information ("CPNI") rules prohibit the identification of a consumer's new LEC.

On the other hand, Qwest Communications ("Qwest") properly recognizes that the FCC must hold the industry's feet to the fire for progress to be made within the standards process in order to develop a solution to carriers' billing problems. Americatel fully supports Qwest's comments in this area.

Americatel recommends that the Commission adopt minimum CARE standards for all carriers with the exception of rural LECs; put carriers on notice that they may be held liable for damages to other carriers for failing to meet those standards on a reasonable basis; and direct the Industry to adopt a line-level database solution by no later than July 1, 2005.

II. The Large ILECs' Cries about the Costs of Minimum CARE Standards and a National Line-Level Database Ring Hollow

Several of the large incumbent local exchange carriers ("ILECs") object to the "high costs" associated with the implementation of mandatory minimum standards for CARE and for a national line-level database. However, when examined in context, those cries ring hollow and ignore the benefits to the public interest of preserving consumer access to dial-around services.

For example, the Frontier and Citizens Telephone Companies (“Citizens”) argue that implementation of the proposed minimum CARE standards would cost the 2.4 million access line company an estimated \$4.3 million to implement.³ According to Citizens, this sum would “equal more than 2% of the consolidated 2003 net income of Citizens’ holding company, Citizens Communications Company.”⁴

Americatel appreciates Citizens’ financial concerns. However, the financial problems incurred by dial-around carriers caused by the inability to bill for all of their calls due to the lack of timely and accurate customer billing data are, on a percentage basis, much larger than those faced by Citizens for updating its systems to handle minimum CARE standards. Even though Americatel implemented an aggressive call-blocking campaign (which cost Americatel both customers and revenues), Americatel’s 2003 unbillable calls still amounted to approximately 3.5% of revenues. On a relative basis, Americatel’s financial problems related to unbillable calls are much greater than the financial impact on Citizens should the FCC require it to adopt minimum CARE standards.

Moreover, when compared to some of Citizens’ other expenses, such as executive compensation, the cost for upgrading its systems to handle the exchange of carrier billing data among carriers seems small. The alleged compliance cost for Citizens of \$4.3 million amounts to approximately \$0.15 for each of Citizens’ 2.4 million access lines, per month, for one year. However, Citizens’ 2004 Proxy Statement filed with the U.S. Securities and Exchange Commission (“SEC”) indicates that the Company also paid its top three executives a total of

³ Citizens Comments, at 2-4.

⁴ *Id.*, at 3, citing Citizens Communications Company 2003 Form 10-K.

\$13,441,366 during 2003.⁵ On a one-year basis, Citizens recovered approximately \$0.47 per month, from every access line it served during 2003 just to pay three individuals.

Americatel is not necessarily suggesting, herein, that Citizens' executives were improperly or excessively compensated during 2003 or that Citizens should be cavalier about incurring an additional \$4.3 million in costs in order to implement minimum CARE standards. Rather, Americatel is simply putting Citizens' financial plea into perspective. For less than one-third of the cost for employing three corporate officers for a single year, Citizens could modify its systems in a manner that would enable all carriers to bill their presubscribed customers in a timely and accurate manner, would ensure that Citizens' customers would have continued access to many carriers and, thus, would likely provide those customers with more benefits than they obtain from Citizens' executive compensation plan.

III. Those Opposing the Establishment of a National Line-Level Database Ignore the Reality that Other Sources of Customer Identification Data Are not Worth their Price

Various parties argue that a national line-level data base is not necessary because there are other products and services in the market that could provide dial-around carriers with the information needed to identify and bill callers. For example, SBC Communications ("SBC") argues that there already exist "multiple industry sources to provide the information Americatel seeks."⁶ SBC suggests that these products include: "the various regulated and unregulated line information databases made available by individual LECs, Intrado's intelliBase product, and

⁵ Citizens Communications Company, Schedule 14A (2004), at 15.

⁶ Comments of SBC, at 11. *See also*, Comments of NeuStar, *passim*.

NeuStar's OSS Clearinghouse Service.”⁷

Americatel is aware of these other products in the market. Indeed, Americatel has studied purchasing these products as a solution to its billing problem, but has, unfortunately, discovered that these products are generally out-of-date and somewhat inaccurate. Most important, because of the lack of mandatory and timely participation in a single national database or clearinghouse by all carriers, these various market solutions are incomplete.⁸ In sum, these products are not worth the prices charged.

SBC is largely correct when it states that all of the products noted “identify the local service provider of the telephone numbers they contain.”⁹ But, to state the obvious, the products contain only the telephone numbers that they contain. Because all carriers are not required to provide data to a centralized repository, the identified products, which are only as complete as their data sources, have little value to Americatel or any other dial-around service provider. Dial-around carriers need to be able to identify the serving LEC for each and every ANI if dial-around carriers are to expect to bill for all of their calls.

Americatel worked with both AT&T and MCI, which serve a significant number

⁷ Comments of SBC, at 11.

⁸ This is not to criticize any of the vendors. They simply cannot have a complete product so long as all carriers are not required to provide data necessary for vendors to assemble ubiquitous products. The market is, in this case, inadequate to solve the problem. Government intervention is necessary just as it is in the area of E-911 emergency calling services. For any community's E-911 service to work such that the appropriate emergency personnel can be dispatched in response to every valid E-911 call, the Public Service Answering Point (“PSAP”) must have the names, addresses and telephone numbers for all residents of the community served by the PSAP, regardless of which LEC provides those customers with telephone service. This is why most, if not all, state Public Utility Commissions (“PUCs”) require a new CLEC to have made arrangements with all affected PSAPs for the handling of all of the CLEC's customers before permitting the new carrier to begin operations.

of Americatel's dial-around customers, in an attempt to obtain billing information for those customers. Americatel signed agreements with both major carriers to furnish customer-billing information for telephone numbers (Automatic Number Identification listings or "ANIs") provided by Americatel. Both carriers cooperated fully with Americatel. However, the agreement with AT&T produced Billing Name and Address ("BNA") information for only 2.82% of the ANI listings sent by Americatel to AT&T even though Americatel paid for every ANI searched. MCI was able to provide Americatel with BNA information for 16% of the ANI listings submitted to MCI by Americatel. Moreover, even when BNA information was produced, it was too often obsolete, such that Americatel still could not render bills to its customers.

The problem is not with AT&T or MCI's level of cooperation, expertise or good intentions. Similarly, companies such as SBC, Intrado, Telecordia Technologies, or NeuStar, probably have developed reasonable, but incomplete, products. The problem with these products is that none of the vendors has access to all the information necessary for them to meet the needs of dial-around carriers. Indeed, as even SBC acknowledges, these various (incomplete) products, "[w]hen integrated into a complete solution, ... should cover nearly every telephone number in the North American Numbering Plan."¹⁰ That's right; Americatel agrees fully that an integrated

Continued from previous page

⁹ *Id.*

¹⁰ *Id.*

solution, be it a line-level database or a mandatory clearinghouse, would meet the needs of all carriers to obtain accurate and timely customer billing information.

Since every wireline telephone number in the U.S. portion of the North American Numbering Plan (“NANP”) can make a dial-around call, dial-around carriers need to know which LEC is providing local service to each and every specific telephone number. Knowing which carrier provides local service to only some telephone numbers means that dial-around carriers will be assured that they cannot bill for all of their calls. That result is simply unfair.

IV. Many Parties Do not Seem to Understand the Nature of the Dial-Around Market

Various parties filed comments that indicate a basic lack of understanding of the dial-around market. While Americatel has consistently supported an exemption from the mandatory exchange of customer billing information for small rural telephone companies, Americatel must strongly rebut their arguments that a national line-level database for the rest of American carriers is not necessary. For example, the Oklahoma Rural Telephone Companies (“Oklahoma LECs”) claim that dial-around carriers can simply “send their call data to clearinghouses, which in turn send the call rating information to the appropriate LEC or LEC billing vendor for end-user billing.”¹¹

Americatel already sends its call rating information, along with the associated ANI listings, to a clearinghouse for further handling. Americatel’s clearinghouse, in turn, forwards the same information for each ANI listing to the customer’s last-known LEC or its billing agent. For example, for its Tampa dial-around customers, Americatel has been sending

¹¹ Comments of Oklahoma LECs, at 8.

this information (ANI listings and call records) through its clearinghouse to Verizon. So long as Verizon still serves those customers, it would either provide billing and collection service or BNA information to Americatele. However, once any of these customers switch local service from Verizon to a CLEC, Verizon simply can no longer provide Americatele with either billing and collection service or BNA information for any of those ANIs that have moved to CLECs.

Verizon, which is not obligated to provide the identity of the customers' new CLECs (*i.e.*, the CLECs to which Verizon ported the telephone numbers), simply returns the information back to Americatele's clearinghouse with a Return Code 50 ("RC50") remark that indicates the ANIs in question cannot be billed. Americatele is then left to guess which other LEC in Tampa might be serving the telephone numbers associated with the RC50 returns. The plain and simple problem remains that a dial-around carrier that does not know which LEC serves its customers cannot bill for its calls.

Next, the Oklahoma LECs argue that long distance carriers can simply enter into BNA agreements with LECs.¹² Again, this proposed solution does not address the more fundamental problem that the dial-around carrier must first know the identity of the LEC serving a specific ANI before it can even approach such LEC for BNA information. It would be outrageous and unreasonable for Americatele or any other dial-around carrier to be required to send its call rating information and associated ANI listings to every single LEC operating within an Area Code in order to obtain BNA for each ANI listing. Such a result would be as absurd as if each of the Oklahoma LECs were required to contact every other carrier to obtain each

¹² *Id.*, at 9. *See also*, Comments of Verizon, at 5.

Oklahoma LEC's share of the other carriers' universal service fund ("USF") contributions. Certain telephone industry functions, including USF contributions and distributions, number portability information and identification of the LEC serving a specific ANI, must be handled on a unified and centralized basis for them to work.

Similarly, the Oklahoma LECs do not seem to understand or have otherwise misstated the FCC's BNA disclosure rules. The Oklahoma LECs state that the Commission's rules "require customer consent for disclosure of BNA."¹³ That statement is incorrect. The Commission's rules do not require a consumer to consent to the disclosure of her or his BNA to another carrier for billing purposes. The FCC, in adopting its rules, stated that: "end users ... have no reasonable expectation of privacy regarding disclosure of BNA to telecommunications service providers for billing purposes."¹⁴ The FCC continued by stating that it must balance consumers' desire for privacy with "interstate service providers' need to obtain payment for their services."¹⁵ Therefore, the FCC concluded as follows: "We believe that end users who wish to have their calls billed to their card or line accounts give implied consent to the LEC to disclose line or card account BNA to the interstate service provider whose services the caller uses."¹⁶ Accordingly, the Oklahoma LECs have misconstrued Section 64.1201 of the Commission's rules. The rule supports Americatele's position.

¹³ Comments of Oklahoma LECs, at 9, *citing* 47 C.F.R. §64.1201.

¹⁴ *Policies and Rules Concerning Local Exchange Carrier Validation and Billing Information for Joint Use Calling Cards*, Second Report & Order, 8 FCC Rcd 4478, at ¶28 (1993) ("*BNA Second Report & Order*").

¹⁵ *Id.*, at ¶30.

¹⁶ *Id.*

The comments of Martin Group, Inc. (“Martin”) to the effect that dial-around carriers, which offer casual dialing services to unknown customers as opposed to presubscribed service to identified customers, get what they deserve when they cannot bill for their services is dead wrong and out-of-line.¹⁷ The essence of the dial-around business is that consumers do not need to establish business relationships with a carrier before service can be used. Rather, consumers may generally just dial access codes and place calls. As Martin correctly notes, dial-around carriers do not know the identity of their customers, but only the customers’ ANI listings.

It would be fair, under these circumstances, for Martin and others to argue that a dial-around carrier must expect higher levels of uncollectible bills than presubscribed carriers, since the latter not only know the identity of each of their presubscribed customers, but they can also conduct credit checks and require the payment of deposits to secure their bills. However, Ameritel has never complained that the lack of customer billing information has lead to high levels of uncollectible accounts. Indeed, Ameritel has informed the FCC that Ameritel collects more than 91% of its charges from dial-around customers when Ameritel can actually cause statements to be rendered to its customers.

Rather, as Ameritel has repeated over and over again, its problem is that, in many instances, Ameritel cannot even send an invoice to its customers because of the lack of cooperation from various LECs that are not willing to identify the LECs to which they ported customer telephone numbers. The unassailable fact that such information is necessary for any dial-around carrier to be able to bill for all of its calls is simply being ignored by most ILECs, as if it were not true.

¹⁷ Comments of Martin, at unnumbered page 3. *See also*, Comments of Oklahoma LECs, at 9.

Fortunately for Americatel, the superciliousness of various commenting parties toward the dial-around industry is not shared by the FCC. The Commission has always recognized the need for all carriers to be able to bill for their services. In adopting its BNA rules the FCC stated as follows:

Moreover, carriers must be able to bill and collect for the services they provide, or obtain billing and collection services from a third party at reasonable rates. As we found in the Detariffing Order, BNA availability to all carriers wishing to do their own billing and collection and to third party billing agents ensures that competitive forces will keep the rates for LECs' billing and collection services reasonable.¹⁸

V. ILECs are Distorting the CPNI Rules to Stifle Competition

Several ILECs, including BellSouth, argue that, after they lose a customer to another LEC, they cannot inform a dial-around carrier of the identity of the customer's new LEC because such a disclosure would violate the customer's privacy or even the FCC's CPNI rules.¹⁹ That position, which was earlier taken by fellow Bell Operating Company ("BOC") SBC in this docket, is simply wrong.²⁰

The information that Carrier X serves Customer Z is not CPNI. As the Commission is well aware, Section 222 of the Act regulates a carrier's use of CPNI. Section 222(h) of the Act defines CPNI as:

(A) information that relates to the quantity, technical configuration, type, destination, location, and amount of use of a telecommunications service subscribed to by any customer of a

¹⁸ *BNA Second Report & Order*, at ¶30 (footnote omitted).

¹⁹ Comments of BellSouth, at 10. *See also*, Comments of Citizens, at 6; Comments of the United States Telecom Association ("USTA"), at 6-7.

²⁰ Comments of SBC (filed in this proceeding on January 21, 2003), at 1-2.

telecommunications carrier, and that is made available to the carrier by the customer solely by virtue of the carrier-customer relationship; and (B) information contained in the bills pertaining to telephone exchange service or telephone toll service received by a customer of a carrier.

A statement that “Carrier X now provides service to Customer Z” does not fit this definition. Such information may lawfully be disclosed.

Moreover, even if the Commission were to conclude that such information did constitute CPNI, it could still be lawfully disclosed to enable a carrier to bill for its calls. The FCC addressed this point when it said:

We agree that section 222(d)(2)’s exception for the disclosure of CPNI “to protect the rights or property of the carrier, or to protect users of those services and other carriers from fraudulent, abusive, or unlawful use of, or subscription to, such services” includes the use and disclosure of CPNI by carriers to prevent fraud. Sections 222(d)(1) and (2) establish that the carrier and public’s interest in accurate billing and collecting for telecommunications services and in preventing fraud and abuse outweigh any privacy interests of those who might attempt to avoid payment of their bills or perpetrate a fraud.²¹

BellSouth understands the CPNI rules. It is a successful and sophisticated company with a highly capable staff of employees. Rather, BellSouth, like the other BOCs, simply does not want dial-around competition and will make virtually any argument that might result in a market with less risk to its revenue streams.

Moreover, BellSouth’s “strict construction” argument in the instant case seems

²¹ *Implementation of the Telecommunications Act of 1996; Telecommunications Carriers Use of Customer Proprietary Network Information and Other Customer Information; and Implementation of the Non-Accounting Safeguards of Sections 271 and 272 of the Communications Act of 1934, as Amended*, Second Report & Order and Further Notice of Proposed Rulemaking, 13 FCC Rcd 8061, at ¶83 (1998).

out of place when contrasted with BellSouth's previously argued position against the FCC's placing of any CPNI restrictions on BellSouth's use of CPNI by the Company and its affiliates. For example, in opposing a requirement for carriers to obtain their customers' express permission to use or disclose CPNI internally (*i.e.*, an "opt-in" plan), BellSouth argued that a customer's approval to permit BellSouth to use all of the customer's CPNI without restriction "easily may be inferred from a customer's inaction, particularly when that inaction is preceded by notice of the consequences of inaction."²²

VI. Qwest Properly Recognizes that the FCC Must Hold the Industry's Feet to the Fire for Progress to be Made within the Standards Process

Americatel has always agreed that the exact details of carriers' exchange of customer billing information should be developed by the industry through the Ordering and Billing Forum ("OBF"), a committee operating under the umbrella of the Alliance for Telecommunications Industry Solutions ("ATIS"). However, Americatel has also consistently argued that the Commission must not simply allow the problems to fester unsolved at the OBF. Rather, the FCC must monitor the industry's work and set deadlines for its completion.²³

Qwest is of a similar mind. It recognizes that the FCC must ensure that the industry continues to be motivated to solve these problems in a timely manner. Qwest urged the Commission to "enhance" the industry's motivation for satisfactory and prompt resolution of the issues before the OBF by "establish[ing] target dates for completion of the standards activity."²⁴

²² Comments of BellSouth filed in CC Docket No. 96-115, November 1, 2001, at 6.

²³ Americatel's Comments, at 11 *et seq.*

²⁴ Comments of Qwest, at 13.

Similarly, Qwest urges the FCC to remind carriers that “Commission prescriptive activity was still available as an option” should some carriers try to kill the OBF’s progress through delay.²⁵ Americatel supports Qwest’s comments in this regard.

VII. Conclusion

For the reasons set forth above and in Americatel’s June 3, 2004 Comments, the Commission should adopt minimum CARE standards for all carriers, with the exception of rural ILECs; put carriers on notice that they may be held liable for damages to other carriers for failing to meet those standards on a reasonable basis; and direct the Industry to adopt a line-level database solution by no later than July 1, 2005.

Respectfully submitted,
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²⁵ *Id.*

CERTIFICATE OF SERVICE

I, Lila A. Myers, do hereby certify that the foregoing REPLY COMMENTS OF AMERICATEL CORPORATION was served on this 18th of June, 2004 by U.S. First Class upon the following:

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